



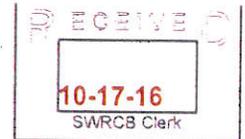
Water Quality and Environmental Services
1221A S Bascom Ave, San Jose CA 95128



October 17, 2016

Public Comment
Water Quality Enforcement Policy
Deadline: 10/18/16 12:00 noon

The Honorable Felicia Marcus, Chair
and Members of the State Water Resources Control Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Delivered electronically on 10/17/2016 to commentletters@waterboards.ca.gov

Re: Comment Letter – Water Quality Enforcement

Dear Chair Marcus and Members of the Board:

I would like to thank you for the opportunity to provide comments on the Proposed Amendments to the State Water Resources Control Board's Water Quality Enforcement Policy (Revised Enforcement Policy) issued on August 4, 2016.

Background:

San Jose Water Company (SJWC) is an investor owned utility that is regulated by the California Public Utilities Commission (PUC). SJWC serves one million consumers and its service area encompasses 139 square miles, including most of San Jose; most of Cupertino; the entire cities of Campbell, Monte Sereno, and Saratoga; the Town of Los Gatos; and parts of unincorporated Santa Clara County. SJWC owns and operates three water treatment plants and over 100 wells at thirty sites within its service area.

Comments:

SJWC understands that the State Water Resources Control Board ("State Water Board") is proposing amendments to its Revised Enforcement Policy to clarify principles that guide enforcement, by the State Water Board and the Regional Water Quality Control Boards, of the Porter-Cologne Water Quality Control Act and the federal Clean Water Act. We understand the State Water Board intends that the revisions should provide greater fairness and transparency to the enforcement process and the penalty calculation methodology as well as change the case prioritization process for enforcement actions in order to ensure fair, consistent, and efficient application of the policy on a statewide basis.

SJWC believes, however, that certain changes must be made to the Revised Enforcement Policy, in order to meet the State Water Board's stated goals. These changes are needed to address the fact that the Revised Enforcement Policy focuses on traditional point source discharge violations primarily by publicly-owned treatment works (POTWs) facilities, and fails to account for the unique activities of Public Water Systems. Public Water System discharges primarily occur in connection with activities related to public health protection, construction, operation, and maintenance of water supply infrastructure and equipment for treatment, storage, and delivery of potable water to consumers. The focus of the Revised Enforcement Policy creates the following two general concerns for Public Water Systems:

- 1) While the Revised Enforcement Policy will govern enforcement actions against Public Water System for violations of all applicable waste discharge related permits, the Revised Enforcement Policy appears to have been drafted with a predominant focus on point source discharge violations and POTW-related discharges. As a result, the Revised Enforcement Policy creates a substantial risk of enforcement against Public Water Systems for their low-threat discharges, including low-threat discharges that comply with the Statewide General Permit for Drinking Water System Discharges, Order WQ 2014-0194-DWQ, NPDES No. CAG 140001 (Statewide General Permit).
- 2) The Revised Enforcement Policy, including the provisions of the penalty calculator, should be modified to positively incentivize Public Water Systems to invest in and implement state-of-the-art discharge management practices that exceed industry practices for certain types of discharges. Providing for recognition of Public Water Systems that not only comply with, but exceed industry standard practices, is critical to fostering investment in technologies that may mitigate the impact of unplanned emergency-related discharges. Positive incentivization could include the following elements:
 - a. Adjustment factors that would reduce the financial liability of non-compliant discharges that were mitigated with the use of technology that exceeds industry practices.
 - b. Increasing or eliminating the 50 percent cap on the use of assessed penalties for capital and operation improvements if the discharger is allocating money to improve water system infrastructure with the intent to avoid/minimize discharge violations to the maximum extent practicable. We recommend not limiting this provision to systems serving small or economically disadvantaged communities; the goal should be to end violations across the state, regardless of the economic status of the communities served.

- c. Increasing or eliminating the 50 percent cap on use of assessed penalties for capital and operational improvements for water system infrastructure improvements near environmentally sensitive areas, and allow Enhanced Compliance Action (ECA) funds to be allotted for such improvements.
- d. A Public Water System should be given the option to enter into an ECA and put, for instance, money back into infrastructure, BMP enhancements, training, and the revision of Standard Operating Procedures.

A positive incentivization approach would benefit the water agencies and their rate payers, as well as the State Board's goal of minimizing discharges and meeting discharge requirements. In addition, this approach would also be beneficial to the environment.

The Revised Enforcement Policy also does not seem to take into account that Public Water Systems provide essential public water supply services to a wide range of consumers. The policy should be modified to recognize the critical public services provided to these communities, not only by POTWs, but also by Public Water Systems and should be modified to:

- 1) Allow discounts or credits in assessed penalties and an increased use of supplemental environmental projects by Public Water Systems.
- 2) Increase the percentage of Drinking Water System penalties that may be applied to ECAs.

Lastly under the Revised Enforcement Policy, except during storm events, discharges contributing to in-stream turbidity in excess of 100 NTU in receiving waters with beneficial uses of COLD, WARM and/or WILD constitute Class I priority violations. The Revised Enforcement Policy provides no indication of the basis of the 100 NTU limit, or the reasons that such a limit would be specified, rather than deferring to applicable permit turbidity effluent limitations/WDRs, or receiving water limitations derived from the applicable Basin Plan. Please note that the Statewide General Permit specifies that only discharges that cause or contribute to an exceedance of a receiving water limitation for turbidity specified in the applicable Basin Plan (which may be much higher than 100 NTU based on background receiving water conditions) constitute a violation of the permit. Moreover, the Drinking Water System Permit specifies an action level of 100 NTU, meaning that an exceedance of the 100 NTU turbidity limit requires the Drinking Water System to take action to modify and enhance BMPs, but does not constitute a violation of the permit so long as such action is taken. Contrary to these conditions of the Drinking Water System Permit, under the Revised Enforcement Policy such compliant Drinking Water System discharges exceeding the 100 NTU turbidity limit may qualify as Class I priority violations, subjecting Public Water Systems to unwarranted enforcement actions.

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Conclusion:

SJWC appreciates this opportunity to provide comments and believes that the Revised Enforcement Policy would better meet its stated goals if it were to incorporate the comments suggested by the Association of California Water Agencies, the California Water Association, and SJWC.

Respectfully,



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Francois Rodigari
Date: 2016.10.17
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Francois Rodigari
Director of Water Quality and Environmental Services

cc: Andrew R. Gere, P.E., SJWC President and Chief Operating Officer
Curtis A. Rayer, SJWC Vice President of Operations